

AN ACT

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE ENGINEERING AND
SURVEYING PRACTICE ACT; CHANGING PROFESSIONAL REQUIREMENTS
FROM REGISTRATION TO LICENSURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-23-2 NMSA 1978 (being Laws 1987,
Chapter 336, Section 2, as amended) is amended to read:

"61-23-2. DECLARATION OF POLICY.--The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that he is qualified to so practice and shall be licensed as provided in the Engineering and Surveying Practice Act. It is unlawful for any person to practice or offer to practice in New Mexico or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional, licensed engineer or

surveyor unless that person is licensed or exempt under the provisions of the Engineering and Surveying Practice Act. The practice of engineering or surveying shall be deemed a privilege granted by the board based on the qualifications of the individual as evidenced by the licensee's certificate, which shall not be transferable."

Section 2. Section 61-23-3 NMSA 1978 (being Laws 1987, Chapter 336, Section 3, as amended) is amended to read:

"61-23-3. DEFINITIONS.--As used in the Engineering and Surveying Practice Act:

A. "approved" or "approval" means acceptable to the board;

B. "board" means the state board of licensure for professional engineers and surveyors;

C. "conviction" or "convicted" means any final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

D. "engineer" means a person who is qualified to practice engineering by reason of his intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience;

E. "engineering" or "practice of engineering"

means any creative or engineering work that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The "practice of engineering" may include the use of photogrammetric methods to derive topographical and other data. The "practice of engineering" does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

F. "engineering committee" means a committee of

the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering;

G. "engineer intern" means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

H. "fund" means the professional engineers' and surveyors' fund;

I. "incidental practice" means the performance of other professional services that are related to a licensee's work as an engineer;

J. "professional development" means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge;

K. "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who is licensed by the board to practice the profession of engineering;

L. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a

licensee in that profession, and by sealing or signing the documents, the professional engineer or surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

M. "surveying" or "practice of surveying" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions thereof;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls for surveys for design, topographic surveys, including photogrammetric methods, construction surveys of engineering and architectural public works projects; and

(5) the preparation and perpetuation of

maps, records, plats, field notes and property descriptions;

N. "surveying committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying;

O. "surveyor" or "professional surveyor" means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and methods of surveying acquired by education and experience, and who is licensed by the board to practice surveying;

P. "surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act; and

Q. "surveying work" means the work performed in the practice of surveying.

The board recognizes that there may be an overlap between the work of engineers and surveyors in obtaining survey information for the planning and design of an engineering project. A registered professional engineer who has primary engineering responsibility and control of an engineering project may perform an engineering survey.

Engineering surveys may be performed by a licensed

professional engineer on a project for which he is providing engineering design services. Engineering surveys include topographic surveying activities required to support the sound conception, planning, design, construction, maintenance and operation of said projects but exclude the surveying of real property for establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system."

Section 3. Section 61-23-5 NMSA 1978 (being Laws 1987, Chapter 336, Section 5, as amended) is amended to read:

"61-23-5. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS--MEMBERS--TERMS.--

A. There is created the "state board of licensure for professional engineers and surveyors" which shall consist of five licensed professional engineers, at least one of whom shall be in engineering education, three licensed professional surveyors and two public members.

B. The members of the board shall be appointed by the governor for staggered terms of five years. The appointees shall have the qualifications required by Section 61-23-6 NMSA 1978. The appointments shall be made in such a manner that the terms of not more than two members expire in each year. Each member of the board shall receive a certificate of appointment from the governor. Before the beginning of the term of office, the appointee shall file

with the secretary of state a written oath or affirmation for the faithful discharge of official duty. A member of the board may be reappointed but may not serve more than two consecutive full terms. A member shall not be reappointed to the board for at least two years after serving two consecutive full terms. The board may designate any former board member to assist it in an advisory capacity.

C. Each member may hold office until the expiration of the term for which appointed or until a successor has been duly qualified and appointed. In the event of a vacancy for any cause that results in an unexpired term, if not filled within three months by official action, the board may appoint a provisional member to serve until the governor acts. Vacancies on the board shall be filled by appointment by the governor for the balance of the unexpired term."

Section 4. Section 61-23-6 NMSA 1978 (being Laws 1987, Chapter 336, Section 6, as amended) is amended to read:

"61-23-6. BOARD MEMBERS--QUALIFICATIONS.--

A. Each engineer member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of engineering as a professional engineer for at least ten years, including responsible charge of engineering projects for at least five years, or engaged in engineering education

for at least ten years, including responsible charge of engineering education for at least five years, and shall be a professional engineer licensed in New Mexico.

B. Each surveyor member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of surveying as a professional surveyor for at least ten years, including responsible charge of surveying projects for at least five years, and shall be a professional surveyor licensed in New Mexico.

C. Each public member shall be a citizen of the United States, a resident of New Mexico, shall not have been licensed nor be qualified for licensure as an engineer, surveyor, architect or landscape architect and shall not have any significant financial interest, direct or indirect, in the professions regulated."

Section 5. Section 61-23-9 NMSA 1978 (being Laws 1987, Chapter 336, Section 9, as amended) is amended to read:

"61-23-9. BOARD--ORGANIZATION--MEETINGS.--

A. There shall be an "engineering committee" composed of the five members of the board who serve as licensed professional engineers and one of the public members, who shall be appointed to the committee by the board. The engineering committee shall meet in conjunction with all board meetings. The bylaws or rules of the board

shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. The committee shall elect a chairman and vice chairman from the committee members at the last committee meeting prior to July 1 of each year.

B. There shall be a "surveying committee" composed of the three members of the board who serve as licensed professional surveyors and one of the public members, who shall be appointed to the committee by the board. The surveying committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other qualified board members may serve on this committee. The committee shall elect a chairman and vice chairman from the committee members at the last committee meeting prior to July 1 of each year.

C. All matters that come before the board that pertain exclusively to engineering or exclusively to surveying shall be referred to the respective committee for disposition. The committee action on such matters shall be the action of the board.

D. The board shall hold at least four regular meetings each year. At least one meeting shall be held at the state capitol. The bylaws or rules of the board shall provide procedures for giving notice of all meetings and for holding special meetings. The board shall elect annually a chairman, a vice chairman and a secretary, who shall be members of the board. No member of the board shall be elected to the same office for two consecutive full terms. A quorum of the board shall be a majority of the board. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The board shall have an official seal."

Section 6. Section 61-23-10 NMSA 1978 (being Laws 1987, Chapter 336, Section 10, as amended) is amended to read:

"61-23-10. DUTIES AND POWERS OF THE BOARD.--

A. It shall be the duty of the board to administer the provisions of the Engineering and Surveying Practice Act and to exercise the authority granted the board in that act. The board is authorized to engage such personnel, including an executive director, as it may deem necessary.

B. The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be

reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

C. To effect the provisions of the Engineering and Surveying Practice Act, the board may, under the chairperson's hand and the board's seal, subpoena witnesses and compel the production of books, papers and documents in any disciplinary action against a licensee or a person practicing or offering to practice without licensure. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person refuses to obey any subpoena so issued or refuses to testify or produce any books, papers or documents, the board may apply to a court of competent jurisdiction for an order to compel the requisite action. If any person willfully fails to comply with such an order, that person may be held in contempt of court.

D. The board may apply for injunctive relief to enforce the provisions of the Engineering and Surveying Practice Act or to restrain any violation of that act. The members of the board shall not be personally liable under

this proceeding.

E. The board may subject an applicant for licensure to such examinations as it deems necessary to determine his qualifications.

F. The board shall create enforcement advisory committees composed of licensees as necessary. Each committee shall include at least four licensees in the same category as the respondent. An engineering enforcement advisory committee shall have at least one licensee in the same branch as the respondent. Enforcement advisory committees shall provide technical assistance to the board and its staff. The board shall select members from a list of volunteers submitting their resumes and letters of interest.

G. No action or other legal proceedings for damages shall be instituted against the board, any board member or an agent, an employee or a member of an advisory committee of the board for any act done in good faith and in the intended performance of any power or duty granted pursuant to the Engineering and Surveying Practice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

H. The board, in cooperation with the board of examiners for architects and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to

safeguard life, health and property and to promote the public welfare, the committee shall have as its purpose the promotion and development of the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

I. As used in the Engineering and Surveying Practice Act, "incidental practice" shall be defined by identical regulations of the board and the board of examiners for architects."

Section 7. Section 61-23-11 NMSA 1978 (being Laws 1987, Chapter 336, Section 11, as amended) is amended to read:

"61-23-11. RECEIPTS AND DISBURSEMENT--FUND CREATED.--

A. The "professional engineers' and surveyors' fund" is created in the state treasury. The executive director of the board shall receive and account for all money received under the provisions of the Engineering and Surveying Practice Act and shall pay that money to the state treasurer for deposit in the fund. Money in this fund shall be paid out only by warrant of the secretary of finance and administration upon the state treasurer, upon itemized vouchers approved by the chairman and attested by the

executive director of the board. All money in the fund is appropriated for the use of the board. Earnings from investment of the fund shall accrue to the credit of the fund.

B. The executive director of the board shall give a surety bond to the state in such sum as the board may determine. The premium on the bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the fund.

C. The board may make expenditures of the fund for any purpose that in the opinion of the board is reasonably necessary for the proper performance of its duties pursuant to the Engineering and Surveying Practice Act, including the expenses of the board's delegates to the conventions of, and for membership dues to, the national council of examiners for engineering and surveying and any of its subdivisions or any other body of similar purpose."

Section 8. Section 61-23-12 NMSA 1978 (being Laws 1987, Chapter 336, Section 12, as amended) is amended to read:

"61-23-12. RECORDS AND REPORTS.--

A. The board shall keep a record of its proceedings and a register of all applications for licensure, indicating the name, age and residence of each applicant, the applicant's educational and other qualifications, whether an

examination was required, whether the applicant was rejected, whether a certificate of licensure was granted, the date of the action of the board and such other information as may be deemed necessary by the board. The record and register shall be open to public inspection.

B. The following board records and papers are of a confidential nature and are not public records:

- (1) examination material for examinations not yet given;
- (2) file records of examination problem solutions;
- (3) letters of inquiry and reference concerning applicants;
- (4) board inquiry forms concerning applicants;
- (5) investigation files where any investigation is ongoing or is still pending; and
- (6) all other materials of like confidential nature.

C. The records of the board shall be prima facie evidence of the proceedings of the board set forth in those records, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same effect as if the original were produced.

D. Annually, on or before August 30, the board shall submit to the governor a report of its transactions of the preceding year, accompanied by a complete statement of the receipts and expenditures of the board attested by affidavits of the board's chairman, secretary and executive director."

Section 9. Section 61-23-13 NMSA 1978 (being Laws 1987, Chapter 336, Section 13, as amended) is amended to read:

"61-23-13. ROSTER OF LICENSED PROFESSIONAL ENGINEERS AND SURVEYORS.--A roster showing the names and addresses of all licensed professional engineers and professional surveyors shall be prepared by the executive director of the board prior to September 1 of each even-numbered year. A supplement to the roster shall be prepared by the executive director of the board prior to September 1 of each odd-numbered year. Copies of the roster and supplement shall be made available to each licensee no later than November 30 of each year, shall be placed on file with the secretary of state and the state commission of public records and may be distributed or sold to the public."

Section 10. Section 61-23-14 NMSA 1978 (being Laws 1993, Chapter 218, Section 11) is amended to read:

"61-23-14. CERTIFICATION AS AN ENGINEER INTERN--
REQUIREMENTS.--

A. An applicant for certification as an engineer intern shall file the appropriate application that demonstrates that he:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved, four-year curriculum in engineering or in a board-approved, four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; and

(3) has three references, one of whom shall be a licensed professional engineer.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as an engineer intern. An applicant who has made three unsuccessful attempts at achieving a passing score on the examination shall be eligible to take the examination only after waiting a calendar year. Thereafter, the applicant may take the examination no more than once each calendar year.

C. An applicant may be certified as an engineer intern upon successfully completing the examination, provided that he has:

(1) graduated from a board-approved, four-

year engineering curriculum; or

(2) graduated from a board-approved, four-year engineering technology program accredited by the technical accreditation commission of the accreditation board for engineering and technology, augmented by at least two years of board-approved, post-graduate engineering experience.

D. The certification as engineer intern does not permit the intern to practice as a professional engineer. Certification as an engineer intern is intended to demonstrate that the intern has obtained certain skills in engineering fundamentals and is pursuing a career in engineering."

Section 11. Section 61-23-14.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 12) is amended to read:

"61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--
REQUIREMENTS.--

A. Licensure as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and
reputation;

(2) is certified as an engineer intern;

(3) has five references, three of whom shall

be licensees practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the applicant's engineering experience and reputation. The use of nonlicensed engineer references having personal knowledge of the applicant's engineering experience and reputation other than professional engineers may be accepted by the board provided a satisfactory written explanation is given; and either

(4) has at least four years of approved engineering experience after graduation from a board-approved engineering curriculum; or

(5) has a minimum of six years of approved engineering experience after graduation from a board-approved four-year engineering technology curriculum.

B. After the applicant's application is approved by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional engineer.

C. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional engineer upon action of the board.

D. An applicant may be licensed by endorsement or comity if:

(1) he is currently licensed as an engineer in the District of Columbia, another state, a territory or a

possession of the United States, provided the licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; or

(2) he is currently licensed as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board his competence in current engineering standards and procedures."

Section 12. Section 61-23-18 NMSA 1978 (being Laws 1987, Chapter 336, Section 18, as amended) is amended to read:

"61-23-18. ENGINEERING--EXAMINATIONS.--The examinations for engineering certification and licensure shall be held at least once a year at a time and place the board directs. The engineering committee shall determine the passing grade on examinations."

Section 13. Section 61-23-19 NMSA 1978 (being Laws 1987, Chapter 336, Section 19, as amended) is amended to read:

"61-23-19. ENGINEERING--CERTIFICATE--SEALS.--

A. The board shall issue certificates of licensure pursuant to the provisions of the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals.

C. An engineer shall have the right to engage in activities properly classified as architecture insofar as it is incidental to his work as an engineer, provided the engineer shall not hold himself out to be an architect or as performing architectural services unless duly registered as such."

Section 14. Section 61-23-20 NMSA 1978 (being Laws 1987, Chapter 336, Section 20, as amended) is amended to read:

"61-23-20. ENGINEERING--LICENSURE AND RENEWAL FEES--EXPIRATIONS.--

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued to coincide with the biennial period. The initial licensure fee shall be computed proportionately to the amount of time remaining in the biennial licensure period.

B. The board shall establish by rule a biennial fee for professional engineers. Licensure renewal is accomplished upon payment of the required fee and

satisfactory completion of the requirements of professional development.

C. The executive director shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. Each licensee's shall have the responsibility to notify the board of any change of address.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional engineer for the biennial period.

F. Every license shall automatically expire if not renewed on or before the last day of the biennial period. A licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent licensee may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the licensee wish to renew an expired certificate after the twelve-month period has elapsed, he shall submit a formal application and fee as provided in

Section 61-23-17 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired. The board may adopt rules for inactive and retired status."

Section 15. Section 61-23-21 NMSA 1978 (being Laws 1987, Chapter 336, Section 21, as amended) is amended to read:

"61-23-21. PRACTICE OF ENGINEERING.--

A. No firm, partnership, corporation or joint stock association shall be licensed pursuant to the Engineering and Surveying Practice Act. No firm, partnership, corporation or joint stock association shall practice or offer to practice engineering in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional engineers may engage in the practice of engineering and perform engineering work pursuant to the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional engineer pursuant to the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the practice, shall bear the seal and signature of a professional engineer in responsible charge of

and directly responsible for the work issued. In the case of practice through partnership, at least one of the partners shall be a professional engineer pursuant to the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the partnership, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for such work when issued. In the case of practice through a joint stock association or corporation, services or work involving the practice of engineering may be offered through that joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation that constitute engineering practice is a professional engineer who has authority to bind such joint stock association or corporation by contract; and further provided that all plans, designs, drawings, specifications or reports that are involved in engineering practice, issued by or for such joint stock association or corporation, bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "engineer", "professional engineer",

"engineering", "registered" or "licensed" engineer or any modification or derivative of such terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice engineering in accordance with the requirements in this section."

Section 16. Section 61-23-24 NMSA 1978 (being Laws 1993, Chapter 218, Section 18) is amended to read:

"61-23-24. ENGINEERING--VIOLATIONS--DISCIPLINARY ACTION--PENALTIES--REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or revoke the certificate of licensure, impose a fine not to exceed five thousand dollars (\$5,000), place on probation for a specific period of time with specific conditions or reprimand any professional engineer who is found by the board to have:

(1) practiced or offered to practice engineering in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use as his own the certificate of another;

(3) given false or forged evidence to the board or to any board member for obtaining a certificate of licensure;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of licensure;

(6) falsely presented himself to be a professional engineer by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional engineers adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules of the board.

B. Except as provided in Subsection C of Section 61-23-21 NMSA 1978, nothing in the Engineering and Surveying Practice Act shall prohibit the general use of the word "engineer", "engineered" or "engineering" so long as such words are not used in an offer to the public to perform engineering work as defined in Subsections E and K of Section 61-23-3 NMSA 1978.

C. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific

types of violations. The guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

D. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

E. Any person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against any licensed engineer. The charges shall be in writing and shall be sworn to by the person making the charges and filed with the executive director of the board. All charges shall be referred to the engineering committee, acting for the board. No action that would have any of the effects specified in Subsection D, E, or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the engineering committee acting for the board or by the board.

F. Persons making charges shall not be subject to

civil or criminal suits, provided that the charges are made in good faith and are not frivolous or malicious.

G. The board or any board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

H. The board, for reasons it deems sufficient, may reissue a certificate of licensure to any person whose certificate has been revoked or suspended, providing a majority of the members of the engineering committee, acting for the board, or of the board votes in favor of such reissuance. A new certificate of licensure bearing the original license number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

I. The board shall prepare and adopt rules of professional responsibility for professional engineers as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every licensee and applicant for licensure pursuant to that act and shall be published in the roster. Publication and public notice shall

be in accordance with the Uniform Licensing Act. The board may revise and amend the rules of professional responsibility for professional engineers from time to time and shall notify each licensee in writing of such revisions or amendments.

J. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars (\$5,000) or by imprisonment of no more than one year, or both.

K. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

L. The practice of engineering in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county that the violation occurs."

Section 17. Section 61-23-26 NMSA 1978 (being Laws 1987, Chapter 336, Section 26, as amended) is amended to read:

"61-23-26. PUBLIC WORK.--

A. It is unlawful for the state or any of its political subdivisions to engage in the construction of any public work involving engineering unless the plans and specifications involving engineering have been prepared by and are under the responsible charge of a licensed professional engineer and the public work involving professional surveying has been executed under the responsible charge of a licensed professional surveyor. Nothing in this section shall be held to apply to any public work wherein the contemplated expenditure for the complete project does not exceed one hundred thousand dollars (\$100,000), except for public work involving structural design, structural modifications or surveying.

B. The Engineering and Surveying Practice Act shall not apply to construction surveys of engineering and architectural public works projects, the anticipated construction cost of which is less than one hundred thousand dollars (\$100,000)."

Section 18. Section 61-23-27 NMSA 1978 (being Laws 1987, Chapter 336, Section 27, as amended) is amended to read:

"61-23-27. ENGINEERING--PUBLIC OFFICER--LICENSURE REQUIRED.--No person except a licensed professional engineer shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that

includes the performance or responsible charge of engineering work."

Section 19. Section 61-23-27.3 NMSA 1978 (being Laws 1993, Chapter 218, Section 24) is amended to read:

"61-23-27.3. CERTIFICATION OF SURVEYOR INTERN--
REQUIREMENTS.--

A. An applicant for certification as a surveyor intern shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved four-year curriculum in surveying; and

(3) has three references, two of whom shall be licensed professional surveyors having personal knowledge of the applicant's knowledge and experience.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as a surveyor intern.

C. Upon successfully completing the examination and an approved four-year surveying curriculum, then by action of the board, the applicant may be certified as a surveyor intern.

D. The certification of surveyor intern does not permit the intern to practice surveying. Certification as a

surveyor intern is intended to demonstrate that the intern has obtained certain skills in surveying fundamentals and is pursuing a career in surveying.

E. If otherwise qualified, a graduate of a board-approved but related curriculum of at least four years, to be considered for certification as a surveyor intern, shall have a specific record of four years of combined office and field board-approved surveying experience obtained under the direction of a licensed professional surveyor. Time spent in obtaining the related curriculum will not be counted in the four years of required experience."

Section 20. Section 61-23-27.4 NMSA 1978 (being Laws 1993, Chapter 218, Section 25) is amended to read:

"61-23-27.4. LICENSURE AS A PROFESSIONAL SURVEYOR--
GENERAL REQUIREMENTS.--

A. Licensure as a professional surveyor may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and
reputation;

(2) is certified as a surveyor intern;

(3) has at least four years of approved
surveying experience if graduated from a four-year board-
approved surveying curriculum or has a minimum of eight years

of board-approved surveying experience if graduated from a four-year board-approved related science curriculum; and

(4) has five references, three of which shall be from licensed professional surveyors having personal knowledge of the applicant's surveying experience.

B. The applicant's experience pursuant to Paragraph (3) of Subsection A of this section shall, at a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a licensed professional surveyor.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional surveyor.

D. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional surveyor upon action of the board.

E. If otherwise qualified, an applicant may be licensed if he is currently licensed as a professional surveyor in:

(1) the District of Columbia, another state, a territory or a possession of the United States, provided that:

(a) licensure does not conflict with the provisions of the Engineering and Surveying Practice Act

and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; and

(b) the applicant has passed examinations the board deems necessary to determine his qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

(2) a foreign country and can demonstrate to the board's satisfaction:

(a) evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act; and

(b) his competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico."

Section 21. Section 61-23-27.5 NMSA 1978 (being Laws 1993, Chapter 218, Section 26) is amended to read:

"61-23-27.5. SURVEYING--APPLICATION AND EXAMINATION FEES.--

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, licensure or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of his technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. Fees shall not be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude."

Section 22. Section 61-23-27.6 NMSA 1978 (being Laws 1993, Chapter 218, Section 27) is amended to read:

"61-23-27.6. SURVEYING--EXAMINATIONS.--The examinations for surveying certification and licensure shall be held at least once a year at a time and place the board directs. The surveying committee shall determine the passing grade on examinations."

Section 23. Section 61-23-27.7 NMSA 1978 (being Laws 1993, Chapter 218, Section 28) is amended to read:

"61-23-27.7. SURVEYING--LICENSURE AND RENEWAL FEES--
EXPIRATIONS.--

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued to coincide with the biennial period. The initial licensure fee shall be computed proportionately to the amount of time remaining in the biennial licensure period.

B. The board shall establish by rule a biennial fee for professional surveyors. Renewal shall be granted upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. It shall be the responsibility of the licensee to notify the board of any change of address and to maintain the certificate of licensure current.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional surveyor for the biennial period.

F. Every certificate of licensure shall automatically expire if not renewed on or before the last day of the biennial period. A licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent licensee may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the licensee wish to renew an expired certificate after the twelve-month period has elapsed, he shall submit a formal application and fee as provided in Section 61-23-27.4 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired."

Section 24. Section 61-23-27.8 NMSA 1978 (being Laws 1993, Chapter 218, Section 29) is amended to read:

"61-23-27.8. SURVEYING CERTIFICATES AND SEALS.--

A. The board shall issue certificates of licensure pursuant to the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals."

Section 25. Section 61-23-27.9 NMSA 1978 (being Laws 1993, Chapter 218, Section 30) is amended to read:

"61-23-27.9. SURVEYING--PRACTICE OF SURVEYING.--

A. No firm, partnership, corporation or joint stock association shall be licensed pursuant to the Engineering and Surveying Practice Act. No firm, partnership, corporation or joint stock association shall practice or offer to practice surveying in the state except as provided in that act.

B. Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a partnership, at least one of the partners shall be a professional surveyor pursuant to that act. In the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a joint stock association or corporation, services or work involving the practice of

surveying may be offered through the joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation that constitute the practice is a professional surveyor who has authority to bind such joint stock association or corporation by contract; and further provided that all drawings or reports that are involved in such practice, issued by or for the joint stock association or corporation, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice surveying in accordance with the requirements in this section."

Section 26. Section 61-23-27.10 NMSA 1978 (being Laws 1993, Chapter 218, Section 31) is amended to read:

"61-23-27.10. SURVEYING EXEMPTIONS.--An employee of a firm, association or corporation who performs only the surveying services involved in the operation of the employer's business shall be exempt from the provisions of the Engineering and Surveying Practice Act, provided that

neither the employee nor the employer offers surveying services to the public, and provided that the surveying services performed do not include any determination, description, portraying, measuring or monumentation of the boundaries of a tract of land."

Section 27. Section 61-23-27.11 NMSA 1978 (being Laws 1993, Chapter 218, Section 32) is amended to read:

"61-23-27.11. SURVEYING--VIOLATIONS--DISCIPLINARY ACTIONS--PENALTIES--REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or revoke the certificate of licensure, impose a fine not to exceed five thousand dollars (\$5,000), place on probation for a specific period of time with specific conditions or reprimand any professional surveyor who is found by the board to have:

(1) practiced or offered to practice surveying in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use as his own the certificate of another;

(3) given false or forged evidence to the board or to any board member for obtaining a certificate of licensure;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of licensure;

(6) falsely presented himself to be a professional surveyor by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional surveyors adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board pursuant to the Engineering and Surveying Practice Act;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules adopted by the board.

B. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. Guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

C. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and

shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

D. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any licensee. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of the board. No action that would have any of the effects specified in Subsection D, E, or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the surveying committee, acting for the board, or by the board.

E. Persons making charges shall not be subject to civil or criminal suits, provided the charges are made in good faith and are not frivolous or malicious.

F. The board or any board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall

deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

G. The board, for reasons it deems sufficient, may reissue a certificate of licensure to any person whose certificate has been revoked or suspended, provided a majority of the members of the surveying committee, acting for the board, or of the board votes in favor of reissuance. A new certificate of licensure bearing the original license number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

H. The board shall prepare and adopt rules of professional responsibility for professional surveyors as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every licensee and applicant for licensure pursuant to that act and shall be published in the roster. Such publication and public notice shall be in accordance with the Uniform Licensing Act. The board may revise and amend these rules of professional responsibility for professional surveyors from time to time and shall notify each licensee in writing of the revisions or amendments.

I. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor

punishable upon conviction by a fine of not more than five thousand dollars (\$5,000) or by imprisonment of no more than one year, or both.

J. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

K. The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county in which the violation occurs."

Section 28. Section 61-23-27.13 NMSA 1978 (being Laws 1993, Chapter 218, Section 34) is amended to read:

"61-23-27.13. SURVEYING--PUBLIC WORK.--It is unlawful for the state or any of its political subdivisions to engage in the construction of any public work involving surveying unless the surveying is under the responsible charge of a licensed professional surveyor."

Section 29. Section 61-23-27.14 NMSA 1978 (being Laws 1993, Chapter 218, Section 35) is amended to read:

"61-23-27.14. SURVEYING--PUBLIC OFFICER--LICENSURE

REQUIRED.--No person except a licensed professional surveyor shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that requires the performance or responsible charge of surveying work."

Section 30. Section 61-23-28 NMSA 1978 (being Laws 1987, Chapter 336, Section 28) is amended to read:

"61-23-28. REFERENCE MARKS--REMOVAL OR OBLITERATION--REPLACEMENT.--When it becomes necessary by reason of the construction of public or private works to remove or obliterate any triangulation station, benchmark, corner, monument, stake, witness mark or other reference mark, it shall be the duty of the person in charge of the work to cause to be established by a licensed surveyor one or more permanent reference marks, which shall be plainly marked as witness corners or reference marks as near as practicable to the original mark and to record a map, field notes or both with the county clerk and county surveyor of the county wherein located, showing clearly the position of the marks established with reference to the position of the original mark. The surveys or measurements made to connect the reference marks with the original mark shall be of at least the same order of precision as the original survey."

Section 31. Section 61-23-30 NMSA 1978 (being Laws 1987, Chapter 336, Section 30) is amended to read:

"61-23-30. RIGHT OF ENTRY ON PUBLIC AND PRIVATE PROPERTY--RESPONSIBILITY.--The engineers and surveyors of the United States and licensed professional engineers and surveyors of the state shall have the right to enter upon the lands and waters of the state and of private persons and of private and public corporations within the state for the purpose of making surveys, inspections, examinations and maps, subject to responsibility for actual damage to crops or other property or for injuries resulting from negligence or malice caused on account of that entry."

Section 32. Section 61-23-31 NMSA 1978 (being Laws 1987, Chapter 336, Section 31, as amended) is amended to read:

"61-23-31. LICENSURE UNDER PRIOR LAWS.--Any person holding a valid license as a professional engineer, professional surveyor, professional engineer and surveyor or certification as an engineer intern or surveyor intern granted by the board pursuant to any prior law of New Mexico shall not be required to make a new application or to submit to an examination, but shall be entitled to the renewal of licensure upon the terms and conditions of the Engineering and Surveying Practice Act."

Section 33. Section 61-23-32 NMSA 1978 (being Laws 1987, Chapter 336, Section 32, as amended) is amended to read:

"61-23-32. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The state board of licensure for professional engineers and surveyors is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Engineering and Surveying Practice Act until July 1, 2006. Effective July 1, 2006, the Engineering and Surveying Practice Act is repealed."

Section 34. A new section of the Engineering and Surveying Practice Act is enacted to read:

"SURVEYING--RECORD OF SURVEY.--

A. For those surveys that do not create a division of land but only show existing tracts of record, except in the instance of remonumentation as specified in the board's minimum standards for boundary surveys, within sixty calendar days of the completion of the survey, a professional surveyor shall file and the county clerk shall accept and record a plat of survey entitled "boundary survey plat" that shall:

(1) contain a printed certification of the professional surveyor stating that "this is a boundary survey plat of an existing tract", or existing tracts, if appropriate, and that "it is not a land division or subdivision as defined in the New Mexico Subdivision Act";

(2) identify all tracts by the uniform

parcel code designation or other designation established by the county assessor, if applicable;

(3) meet the minimum standards for surveying in New Mexico as established by the board;

(4) not exceed a size of eighteen inches by twenty-four inches and be at least eight and one-half inches by eleven inches; and

(5) consist of two black-line copies, one of which the county clerk's office may require to be a mylar copy, made by the surveyor from a mylar original, which shall be maintained in the professional surveyor's files. One of the two black-line copies shall be filed and recorded by the county clerk and the other, containing recording information, shall be delivered by the county clerk to the county assessor.

B. Fees for recording a boundary survey plat shall be in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978. The county clerk shall keep a proper index of boundary survey plats by the name of the subdivision, if applicable; owner; and by section, township and range or projected section, township and range if the subject tract is in a land grant. The records shall be kept in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978.

C. For those surveys that do create a division of land, the survey shall be completed in conformity with the

board's minimum standards and in conformity with the New Mexico Subdivision Act and any applicable local subdivision ordinances. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed and recorded pursuant to this subsection shall be filed within sixty calendar days after completion of the survey or approval by the governing authority. The county clerk shall keep a proper index of land division plats by the name of the subdivision; by section, township and range or projected section, township and range if the subject tract is in a land grant; and by the number assigned to the land division plat by the local planning department, if applicable. The records shall be kept in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978."

Section 35. REPEAL.--Sections 61-23-27.1, 61-23-27.2 and 61-23-28.1 NMSA 1978 (being Laws 1993, Chapter 218, Sections 22, 23 and 36, as amended) are repealed.

Section 36. SEVERABILITY.--If any part or application of the Engineering and Surveying Practice Act is held invalid, the remainder or its application to other situations or persons shall not be affected. _____

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